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# STATE OF SOUTH DAKOTA

Department of State

PIERRE

*South Dakota Laws, 1919, 1920, 1921.*

## *Laws Relating To Trade-Marks*

An Act Entitled, An Act to Amend Sections 10411, 10412, 10413, 10414, 10415, and Repealing Section 10417, of the South Dakota Revised Code of 1919, Relating to Trademarks.

**Be It Enacted by the Legislature of the State of South Dakota:**

Section 1. That section 10411 of the South Dakota Revised Code of 1919 be and the same is hereby amended to read as follows:

Section 10411. TRADEMARKS AND LABELS AUTHORIZED. It shall be lawful for a person, corporation, association, or union of working men to adopt for his, its or their protection a trademark, label, term, design, device or form of advertisement for the purpose of designing, making known or distinguishing any goods, wares, merchandise or other product of labor as having been made, manufactured, produced, prepared, packed, or put on sale by such person, corporation, association or union of working men, or by a member or members of such association, or union.

Section 2. That section 10412 of the South Dakota Revised Code of 1919 be and the same is hereby amended to read as follows:

Section 10412. UNLAWFUL USE—PENALTY. Any person who shall use any such trademark, label, term, design, device or form of advertisement of any person, corporation, association or union of working men, after same shall have been lawfully filed as provided in this chapter, whether same shall be exactly like that of any such person, corporation or union or not, if likely to deceive, or use with intent to deceive the public, shall be deemed guilty of a misdemeanor.

Section 3. That section 10413 of the South Dakota Revised Code of 1919 be and the same is hereby amended to read as follows:

Section 10413. USE OF COUNTERFEIT—PENALTY. Every person who shall use any trademark, label, term, design, device or form of advertisement which is a counterfeit of that owned or used by any such person, corporation, association or union, after having been notified that the same is a counterfeit, shall be deemed guilty of a misdemeanor.

Section 4. That section 10414 of the South Dakota Revised Code of 1919 be and the same is hereby amended to read as follows:

Section 10414. RECORD. Every person, corporation, association or union of working men adopting a trademark, label, term, design, device or form of advertisement of the kind specified in section 10411, shall file the same in the office of the secretary of state by leaving two copies thereof with such secretary, who shall file same as a record of his office and issue to the person, corporation, association or union filing same a **certificate of filing**. The fee of the secretary of state for filing same and issuing such certificate shall be five (\$5.00) dollars. Such trademark, label, term, design, device or form of advertisement shall not infringe upon that of any other person, corporation, association or union of working men and the applicant for filing same must be the lawful owner of same or lawfully authorized to use same. The application shall state the name and business

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address of the applicant and a description of the business, and shall set forth the facts showing the right to use and file the trademark, label, term, design, device or form of advertisement. Such application shall be verified and any person or persons making any false or fraudulent representations to procure the filing of same shall be guilty of a misdemeanor.

Section 5. That section 10415 of the South Dakota Revised Code of 1919 be and the same is hereby amended to read as follows:

Section 10415. INJUNCTION. Any such person, corporation, association or union, or authorized person on its behalf, may maintain an action in any court of competent jurisdiction to enjoin the unauthorized use of his, their or its trademark, label, term, design, device or form of advertisement so filed of record, or any unlawful counterfeit or imitation thereof, and in any such action the plaintiff shall be entitled to an injunction perpetually restraining such unauthorized or unlawful use, and to recover such damages as shall have resulted from such unauthorized or unlawful use, including the profits if any derived therefrom by the defendant; and the court shall order all counterfeit or imitation trademarks, labels, terms, designs, devices or forms of advertisement in the possession or under the control of the defendant to be delivered to an officer of the court to be destroyed. This act shall not be construed to lessen, impair or abridge any rights or remedies that have heretofore existed or may exist in favor of anyone owning or rightfully claiming a trademark, label, term, design, device or form of advertisement.

Section 6. That section 10417 of the South Dakota Revised Code of 1919 is hereby repealed.

Approved March 11, 1919.

#### REVISED CODE OF 1919.

Section 253. WHAT MAY BE OWNED. There may be ownership of all inanimate things which are capable of appropriation, or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the good will of a business, trade-marks and signs, and of rights created or granted by statute.

Section 490. TRADEMARKS. One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trademark, any form, symbol or name which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality or description of the thing or business, or the place where the thing is produced or the business is carried on.

Section 948. TRADEMARK. One who sells or agrees to sell any article to which there is affixed or attached a trademark, thereby warrants that mark to be genuine and lawfully used.

Section 4129. COUNTERFEITING TRADEMARK. Every person who willfully forges, counterfeits or procures to be forged or counterfeited any trademark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeit trademark is affixed, or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

Section 4130. KEEPING DIES OF TRADEMARKS. Every person who, with intent to defraud, has in his possession any die, plate or brand, or any imitation of the trademark of any person, for the purpose of making any counterfeit or imitation of any description of such trademark, or of selling same when made, or affixing the same to any goods and selling or offering the same for sale or disposal as the original goods of any other person, and every person who so uses or sells the same, or who fraudulently uses the genuine trademark of another with intent to sell, or

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offer for sale or disposal, any goods not the goods of the person to whom such trademark properly belongs, as genuine and original, is guilty of a misdemeanor.

Section 4131. SELLING GOODS BEARING COUNTERFEIT TRADE-MARK. Every person who sells or keeps for sale any goods upon which any counterfeited trademark has been affixed, intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

Section 4132. IMITATIONS, PARTIAL. Every person who, with intent to defraud, affixes or causes to be affixed to any goods or to any bottle, case, box or other package containing any goods, any label, stamp, brand, imprint, printed wrapper, ticket or mark, which designates such goods by any word or token which is wholly or in part the same to the eye, or to the ear, as the word or any of the words or tokens used by any other person as his trademark, and every person who knowingly sells, or keeps or offers for sale, any such bottle, case, box or other package, with any such label, stamp, brand, imprint, printed wrapper, ticket or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling, exposing or offering for sale such bottle, case, box or other package, was not the first to employ or use such words as his trademark, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action.

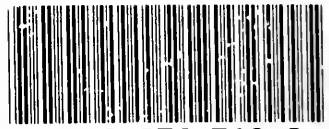
Section 4133. TRADEMARK DEFINED. The word "trademark," as used in the sections preceding, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description.

Section 4134. GOODS DEFINED. The word "goods" as used in the sections preceding, includes every kind of goods, wares, merchandise, compound or preparation, which may be lawfully kept or offered for sale.

Section 4135. AFFIXING DEFINED. The offense of affixing a false trademark to goods is equally complete within the meaning of Sections 4129, 4131 and 4132, whether such mark is affixed to the goods themselves, or to any box, bale, barrel, bottle, case, cask, wrapper or other package or vessel, or any cover or stopper thereof, in which such goods are put up.

Section 4136. REFILLING AND SELLING BOTTLES. Whenever any person engaged in manufacturing, bottling or selling in bottle, soda, mineral water, cider or other non-alcoholic beverage, has filed and published in the manner authorized by law, a description of a name, mark or label usually stamped by him in the bottles containing such beverage, every other person who, without the written consent of such manufacturer or dealer, refills with any beverage, whether genuine or otherwise, with the intent to sell the same, any bottles stamped with such name, mark or label, and every person who sells, disposes of, purchases or traffics in such bottles, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of or trafficked in, for the first offense, and five dollars for each and every bottle so filled, bought, disposed of or trafficked in, for every subsequent offense.

Section 4137. KEEPING BOTTLES WITH INTENT TO REFILL. Every person who keeps any bottles such as are designated in the preceding section, without the written consent of the manufacturer so to do,



with intent to refill or use or sell them in violation of such section, is liable to the penalty therein prescribed.

Section 4138. COMPLAINT, SEARCH, PENALTY FOR KEEPING AND REFILLING BOTTLES. Whenever any manufacturer or dealer designated by the second preceding section, or his agent, shall make oath or affirmation before any magistrate that he has reason to believe and does believe, that any of his bottles stamped and registered as mentioned in said section are being unlawfully used by any person selling or manufacturing mineral water or other non-alcoholic beverage, or that any junk dealer or vendor of bottles has any such bottles secreted in any place, such magistrate shall thereupon issue a search warrant to discover and obtain the same under the provisions of the law upon search warrants; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession, and if such magistrate on summary examination finds that such person has been guilty of a violation of the second preceding section, such magistrate shall proceed to impose the fine therein prescribed, and, if the same be not paid, to commit such person to prison for a term not exceeding fifteen days.

Section 10416. MARKS AND BRANDS ON CONTAINERS. It shall be the duty of the register of deeds, on the application of any person domiciled within his county or any corporation organized under the laws of this state, engaged in the manufacture, bottling or selling of sodawater, mineralwater, aerated waters, unfermented cider, milk, cream or other nonintoxicating beverages in casks, kegs, barrels, jugs, bottles, boxes or other containers, to record in a book suitable for the purpose a description of the names, brands or trademarks used by such person or corporation for marking any container in which any such beverages are sold or kept for sale, which book shall be and remain a public record in his office. It shall thereupon be unlawful for any person, without the written consent of the owner, to fill any such container for the purpose of sale, or to sell, dispose of, buy or traffic in, or wantonly destroy the same, whether filled or not; and any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five nor more than one hundred dollars. And the use by any person other than the rightful owner, without such owner's consent, of any such container, or the possession thereof by any junk dealer or dealer in any such container, the same being marked or stamped and registered as required in this section, shall be prima facie evidence that such use, sale or possession is unlawful, and a search warrant may be procured for the discovery and seizure thereof.

Section 10418. DESTROYING—PENALTY. If any person shall unlawfully and maliciously obliterate, injure or destroy the names, marks or brands affixed to any cask, keg, barrel, jug, bottle, box or other container used or intended to be used for the purpose specified in this chapter, and not his property, the person so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

Section 10419. FOREIGN CORPORATION. Any person residing out of the state, or any corporation organized under the laws of any other state or territory, engaged in the business mentioned in the third preceding section, shall be entitled to the privilege and protection of this chapter; provided; that he or it shall cause the record to be made as provided in such section, in the office of the register of deeds of the county or counties where he or it or his or its duly authorized agents have their place of business within this state.

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